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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,336	11/20/2003	James Rimsa	0343-0030	9254
7590	03/10/2006			EXAMINER
Stephen B. Heller Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd. 200 West Adams Street - #2850 Chicago, IL 60606			GREENHUT, CHARLES N	
			ART UNIT	PAPER NUMBER
			3652	
DATE MAILED: 03/10/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/718,336	RIMSA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Charles N. Greenhut	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5,7-14,16,17,19-22 and 24-30 is/are rejected.
- 7) Claim(s) 6, 15, 18, and 23 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)              |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/10/04 &amp; 11/20/03</u> . | 6) <input type="checkbox"/> Other: ____ .  |

**I. Claim Objections**

1. Claim 13 is objected to because “the retracted dumping position” in line 14 should read -a retracted dumping position-.
2. Claim 28 and 29 are objected to for being in improper dependant form. Dependent claims must refer to a claim previously set forth. Claims 28 and 29 improperly depend from claim 45. It is impossible to determine the scope of these claims. Further examination on the merits is, therefore, precluded.
3. Claim 30 is objected to because “A method refuse collection” in line 1 should read -a method of refuse collection-.
4. Claim 30 is objected to because “from collection container” in line 19 should read - from the collection container-.

**II. Claim Rejections - 35 USC § 112**

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 5, 7-12, 14, 17, 22, and 24-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
  - 1.1. With respect to claim 5, 12, 14, 17 and 22 the phrases “when said receptacle lifter is in the stored position” and “when said receptacle lifter is in the retracted dumping position” lack antecedent basis because these positions are not positively recited previously within the claim.

1.2. With respect to claim 7, and 24 the phrase "so as to" renders the claim indefinite because it is unclear whether the terms following the phrase are positively included in the claim. Thus it is impossible to determine the scope of the claim.

### **III. Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claim(s) 1, 7-8, 13, 16, 19, and 24-25 is/are rejected under 35 U.S.C. 102(b) as being anticipated by SZINTE (US 5,833,428 A).

1.1. With respect to claim 1, SZINTE discloses a receptacle lifter (110), a transporter (100) mounted at the front of the vehicle (Fig. 2), a track (114) movable laterally to engage refuse receptacles (Fig. 11-12).

1.2. With respect to claim 7 and 24, SZINTE discloses a refuse collection vehicle (20), a lifter assembly (30) carried by the vehicle at a front end thereof (Fig. 2), the lifter assembly comprising a receptacle lifter (110), and a transporter

(100), movable in a side-to-side direction between a position spaced laterally from the collection container and a position proximate the container (Fig. 11).

1.3. With respect to claim 8 and 25, SZINTE additionally discloses a track member (114), movable laterally, between a receptacle engaging and storage positions (Fig. 1 & 12).

1.4. With respect to claim 13, 16, and 19, SZINTE discloses a receptacle lifter (110), a transporter (100) mounted at the front of the vehicle (Fig. 2), having a lifter support pivotally attached to the front of the vehicle (Fig. 11).

2. Claim(s) 30 is/are rejected under 35 U.S.C. 102(e) as being anticipated by CUROTT (US 2005/0095096 A1).

2.1. With respect to claim 30, CUROTT discloses a refuse collection vehicle (101) and container carried (102) at the front thereof, a lifter assembly (Fig. 3A), comprising a lifter (351), a transporter (350) for movement in a side to side direction, positioning the vehicle/container adjacent to a refuse receptacle (309b), moving the refuse receptacle lifter to the refuse receptacle engaging position (via 352/351b), engaging the refuse receptacle (via 351), moving to the dumping position (via 352), lifting and dumping the contents of the refuse receptacle into the front loaded collection container (via 353), moving the refuse receptacle lifter to the engaging position (via 352/353) and releasing the refuse receptacle (via 351b)

#### **IV. Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 2, 9, 20, 26 and 30 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over SZINTE (US 5,833,428 A) in view of UPDIKE (US 3,762,586 A).

1.1. With respect to claim 2, 9, 20, and 26 SZINTE additionally discloses the track having a housing (112) and a sliding member (114) to which the receptacle lifter (110) is secured, a hydraulic cylinder (125)/(127) interposed between the housing member and sliding member (Fig. 4). SZINTE fails to teach the housing member fixedly mounted to the vehicle. UPDIKE teaches fixedly mounting a housing (62) to the vehicle. It would have been obvious to one of ordinary skill in the art to modify SZINTE with the mounting arrangement of UPDIKE in order to decrease the torque on the tilt arms.

1.2. With respect to claim 30, SZINTE discloses a refuse collection vehicle (20) and container carried (26) at the front thereof, a lifter assembly (30), comprising a lifter (110), a transporter (100) for movement in a side to side direction, positioning the vehicle/container adjacent to a refuse receptacle (400), moving the refuse receptacle lifter to the refuse receptacle engaging position (Fig. 10), engaging the refuse receptacle (Fig. 11), moving to the dumping position (Fig. 11), lifting and dumping the contents of the refuse receptacle into the front loaded collection container (Fig. 12), moving the refuse receptacle lifter to the engaging position (Fig. 11) and releasing the refuse receptacle (Fig. 10). SZINTE fails to disclose the transporter carried at

the front of the vehicle, aft of the collection container. UPDIKE teaches a transporter (60) carried at the front of the vehicle, aft of the collection container (42). It would have been obvious to one of ordinary skill in the art to modify SZINTE with the mounting arrangement of UPDIKE in order to decrease the torque on the tilt arms.

2. Claim(s) 3, 10-11, 21, and 27 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over SZINTE in view of UPDIKE and VANRADEN (US 6,139,244 A)

2.1. With respect to claim 3, 10, 21, and 27 SZINTE additionally discloses the housing (112) comprising an elongated tubular member. SZINTE does not disclose the housing receiving the sliding member therein. VANRADEN teaches the housing (40)/(42) receiving the sliding member (44) therein. Rearrangement of parts is within the capabilities of one having ordinary skill in the art. It would have been obvious to one of ordinary skill in the art to rearrange the track arrangement of SZINTE in the orientation shown by VANRADEN in order to meet torque or contamination requirements.

2.2. With respect to claim 11, SZINTE additionally discloses the lifter support pivotally attached to the track (Fig. 11).

#### **V. Allowable Subject Matter**

1. Claims 6, 15, 18, and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

1.1. With respect to claims 6, 15, 18, and 23 the following is a statement of reasons for the indication of allowable subject matter:

1.1(a) While the prior art teaches similar lifter grab assemblies and linear transport track assemblies attached thereto, a lifter assembly as described in the language of claims 1 and 4, that includes the unique feature of communication with the linear transport track assembly by means of a pair of spaced apart horizontally oriented beams having an outboard end to which the receptacle lifter is secured and an inboard end by which the lifter support member is pivotally secured to the track member, and a hydraulic cylinder interposed between the track member and lifter support member for moving the lifter between the retracted and transport positions, as detailed in the language of claim 6, is not taught or fairly suggested by the prior art.

1.1(b) While the prior art teaches similar lifter grab assemblies and linear transport track assemblies attached thereto, a lifter assembly as described in the language of claim 13, that includes the unique feature of communication with the linear transport track assembly by means of a pair of spaced apart horizontally oriented beams having an outboard end to which the receptacle lifter is secured and an inboard end by which the lifter support member is pivotally secured to the track member, and a hydraulic cylinder interposed between the track member and lifter support member for moving the lifter between the retracted and transport positions, as detailed in the language of claim 15, is not taught or fairly suggested by the prior art.

1.1(c) While the prior art teaches similar lifter grab assemblies and linear transport track assemblies attached thereto, a lifter assembly as described in the language of claims 1 and 4, that includes the unique feature of communication with the linear transport track assembly by means of a pair of spaced apart horizontally oriented beams having an outboard end to which the receptacle lifter is secured and an inboard end by which the lifter support member is pivotally secured to the track member, and a hydraulic cylinder interposed between the track member and lifter support member for moving the lifter between the retracted and transport positions, as detailed in the language of claim 18, is not taught or fairly suggested by the prior art.

1.1(d) While the prior art teaches similar lifter grab assemblies and linear transport track assemblies attached thereto, a lifter assembly as described in the language of claims 19, that includes the unique feature of communication with the linear transport track assembly by means of a pair of spaced apart horizontally oriented beams having an outboard end to which the receptacle lifter is secured and an inboard end by which the lifter support member is pivotally secured to the track member, and a hydraulic cylinder interposed between the track member and lifter support member for moving the lifter between the retracted and transport positions, as detailed in the language of claim 23, is not taught or fairly suggested by the prior art.

2. Claims 5, 12, 14, 17, and 22 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

2.1. With respect to claims 5, 12, 14, 17, and 22 the following is a statement of reasons for the indication of allowable subject matter:

2.1(a) If applicant were to positively recite, with adequate specificity, the locations and movement of his lifter within parent claims 1 and 4, claim 5 would not be anticipated or rendered obvious by the prior art of record. While SZINTE and VANRADEN teach lifters substantially similar to applicants and UPDIKE teaches independent movement of lift arms and a grab assembly, a lifter assembly, of the type described in the language of claims 1 and 4 that further includes the unique feature of a having a mounting location between the collection container lift arms and the vehicle such that the lifter assembly may remain stationary when the collection container lift arms are actuated, is not taught or fairly suggested by the prior art.

2.1(b) If applicant were to positively recite, with adequate specificity, the locations and movement of his lifter within parent claims 7-11, claim 12 would not be anticipated or rendered obvious by the prior art of record. While SZINTE and VANRADEN teach lifters substantially similar to applicants and UPDIKE teaches independent movement of lift arms and a grab assembly, a lifter assembly, of the type described in the language of claims 7-11 that further includes the unique feature of a having a mounting

location interposed between the collection container lift arms and the vehicle such that the lifer assembly may remain stationary when the collection container lift arms are actuated, is not taught or fairly suggested by the prior art.

2.1(c) If applicant were to positively recite, with adequate specificity, the locations and movement of his lifter within parent claim 13, claim 14 would not be anticipated or rendered obvious by the prior art of record. While SZINTE and VANRADEN teach lifters substantially similar to applicants and UPDIKE teaches independent movement of lift arms and a grab assembly, a lifter assembly, of the type described in the language of claim 13 that further includes the unique feature of a having a mounting location interposed between the collection container lift arms and the vehicle such that the lifer assembly may remain stationary when the collection container lift arms are actuated, is not taught or fairly suggested by the prior art.

2.1(d) If applicant were to positively recite, with adequate specificity, the locations and movement of his lifter within parent claim 16, claim 17 would not be anticipated or rendered obvious by the prior art of record. While SZINTE and VANRADEN teach lifters substantially similar to applicants and UPDIKE teaches independent movement of lift arms and a grab assembly, a lifter assembly, of the type described in the language of claim 16 that further includes the unique feature of a having a mounting location interposed between the collection container lift arms and the

vehicle such that the lifer assembly may remain stationary when the collection container lift arms are actuated, is not taught or fairly suggested by the prior art.

2.1(e) If applicant were to positively recite, with adequate specificity, the locations and movement of his lifter within parent claim 19, claim 22 would not be anticipated or rendered obvious by the prior art of record. While SZINTE and VANRADEN teach lifters substantially similar to applicants and UPDIKE teaches independent movement of lift arms and a grab assembly, a lifter assembly, of the type described in the language of claim 16 that further includes the unique feature of a having a mounting location interposed between the collection container lift arms and the vehicle such that the lifer assembly may remain stationary when the collection container lift arms are actuated, is not taught or fairly suggested by the prior art.

#### **VI. Conclusion**

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.
3. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone

number for the organization where this application or proceeding is assigned is (571)  
273-8300.

4. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CG



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